

Polygraph Examiner Licensing Report January 31, 2018

POLYGRAPH EXAMINERS

	TOTAL FY 2015	TOTAL FY 2016	TOTAL FY 2017	1 st Quarter FY 2018
New Licenses Issued	23	16	9	6
Renewed Licenses Issued	232	233	244	53
*Total Population	256	255	253	259

POLYGRAPH TRAINEES

	TOTAL FY 2015	TOTAL FY 2016	TOTAL FY 2017	1 st Quarter FY 2018
New Licenses Issued	18	19	23	3
Renewed Licenses Issued	11	8	3	4
*Total Population	20	18	24	17

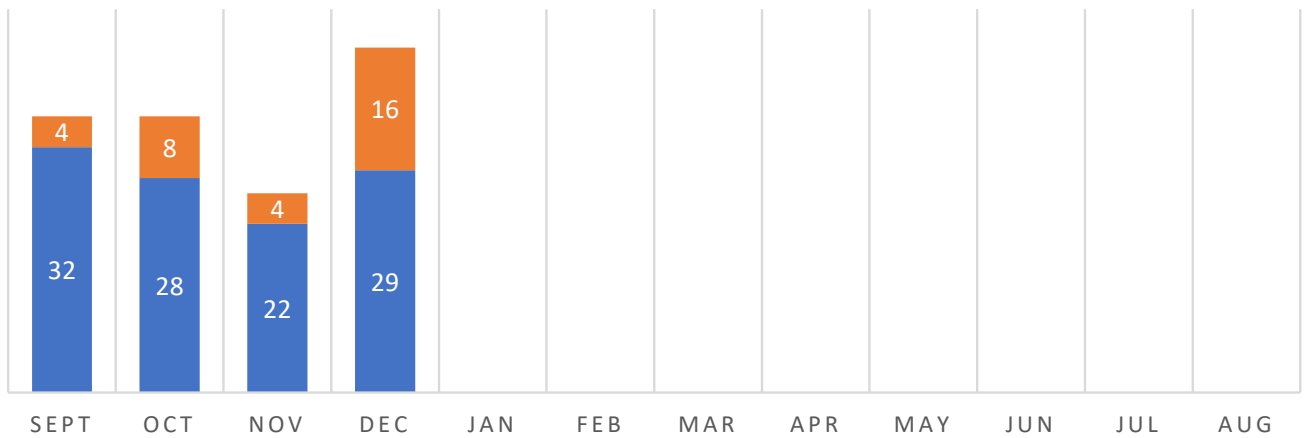
COMBINED

	TOTAL FY 2015	TOTAL FY 2016	TOTAL FY 2017	1 st Quarter FY 2018
New Licenses Issued	41	36	32	9
Renewed Licenses Issued	243	241	247	57
*Total Population	276	273	277	276

*The population number is a snapshot of the number of active licenses on the first day of the month. The number of licenses issued and renewed is the total activity performed during the fiscal year.

POLYGRAPH EXAMINERS CUSTOMER SERVICE CONTACTS FISCAL YEAR 2018

■ Calls ■ Emails



Polygraph Examiners Advisory Committee

Enforcement Division Staff Report

January 31, 2018

Statistics for Polygraph Examiners Program

- Cases Opened since September 1, 2009 – 44
- Cases Closed – 42
 - 34 – insufficient evidence
 - 4 – license granted
 - 2 – warning letter
 - 2 – evaluation letter eligible
 - 0 – disciplinary actions
- Cases Pending – 2

Key Statistics

Shown below are the key statistics for the Polygraph Examiners program and for all TDLR programs combined through November of Fiscal Year 2018.

<u>Statistic</u>	<u>POL</u>	<u>TDLR</u>
• Number of cases opened:	0	2,362
• Number of cases resolved:	1	2,329
• Number of Agreed Orders:	0	356
• Total amount of penalties assessed:	\$ 0	\$661,475
• Total amount of penalties collected:	\$ 0	\$314,842

Shown below are the key statistics for the Polygraph Examiners program and for all TDLR programs combined for Fiscal Year 2017.

<u>Statistic</u>	<u>POL</u>	<u>TDLR</u>
• Number of cases opened:	8	12,054
• Number of cases resolved:	9	12,405
• Number of Agreed Orders:	0	2,309
• Total amount of penalties assessed:	\$ 0	\$5,250,179
• Total amount of penalties collected:	\$ 0	\$2,571,951

Polygraph Advisory Committee

January 31, 2018

Enforcement Division Staff Report

Introduction to the Enforcement Division

The Enforcement Division is responsible for investigating and resolving complaints against licensees and other regulated populations in all programs regulated by Texas Department of Licensing and Regulation (“TDLR” or “the Department”). The Enforcement Division consists primarily of investigators, attorneys and legal assistants. These employees are organized into three sections that reflect the life cycle of a complaint as it moves through the enforcement process.

- **Intake**: The Intake section substantiates the agency’s jurisdiction and performs initial research on each complaint filed, ultimately making the decision whether an investigation should be opened.
- **Investigations**: In each case opened for investigation, the assigned investigator develops a detailed account of the facts through witness interviews, collection of documents, and on-site inspections when necessary, and prepares a written report of the investigation.
- **Prosecution**: The Prosecution section ensures the proper disposition of each case. When the evidence reflects violations, the prosecutor may pursue administrative penalties or license sanctions, or may resolve the case informally if warranted by the circumstances. When the evidence does not indicate violations the prosecutor will close the case. When an enforcement action leads to a hearing, the prosecutor presents the Department’s case to the State Office of Administrative Hearings and the Commission of Licensing and Regulation.

Within the general structure described above, the Enforcement Division utilizes specialized procedures for handling various types of complaints. Those procedures vary primarily depending upon the source of the complaint. Generally, complaints may be characterized as arising from three sources: consumers, the department, and applicants’ criminal histories.

- **Consumer**: complaints from sources outside the agency, including consumers, industry, and municipal officials. *If opened for investigation by Intake, these cases undergo full investigation and are then resolved by the Prosecution section.*
- **Department**: complaints arising from periodic inspections of regulated entities conducted by the Field Operations Division, and from proactive efforts of Enforcement field investigators. *Intake usually forwards these cases directly to a prosecutor for resolution, because the evidence has already been developed by the inspector or field investigator.*

- Criminal History: complaints arising from criminal background checks on license applicants. The criminal history of each license applicant is initially screened by the Licensing Division. If the history includes crimes that may be a basis for denying a license, the application is referred to the Enforcement Division. *Criminal histories are initially screened by a prosecutor. If the prosecutor does not immediately clear the applicant for licensing, the prosecutor will request an investigation of the applicant's criminal history, and will then decide whether to deny or revoke the applicant's license.*

Consistency in the investigation and resolution of complaints is an essential element of effective enforcement. Enforcement works to ensure consistency by following three guidance documents that are regularly updated.

- The Complaint Resolution Procedures Manual provides detailed, standard procedures applicable to all division staff in handling complaints, from intake to investigation to final resolution.
- The Enforcement Plan describes the ranges of penalties and license sanctions that are applicable to specific alleged violations of the statutes and rules enforced by the agency.
- The Criminal Conviction Guidelines set out, for each license type regulated by TDLR, the specific criminal convictions that may render an applicant an unsuitable candidate for the license, along with reasons why those particular crimes are considered to relate to the license.

Polygraph Examiners

(POL)

Texas Occupations Code, Chapter 1703

16 Texas Administrative Code, Chapter 88

Class A:

1st Violation	2nd Violation	3rd Violation
\$100	\$200 to \$1,000	\$1,100 to \$2,000 and/or up to a 1 year full suspension

<ul style="list-style-type: none"> Failure to notify the Department in writing of a change in principal business location not later than the 30th day after the date the change was made 	1703.301, 88.72
<ul style="list-style-type: none"> Failure to register with the county clerk of the county where the business address is maintained 	1703.302, 88.23(a)
<ul style="list-style-type: none"> Failure to prominently display license at the place of business or place of internship 	1703.303, 88.73
<ul style="list-style-type: none"> Failure to inform the subject of a written contract for examiner's services or a waiver of liability of the procedures to file a complaint against the examiner with the Department 	1703.307(1) 88.78
<ul style="list-style-type: none"> Failure to include in a written contract for services or a waiver of liability the name, mailing address, and telephone number of the Department 	1703.307(2)
<ul style="list-style-type: none"> Failure to register with the County Clerk of Travis County when holding a Texas license without a Texas address 	88.23(b)
<ul style="list-style-type: none"> Failure to submit notice of the completion of an internship to the Department in the required manner within ten days 	88.70(h)
<ul style="list-style-type: none"> Failure to notify the Department in writing of a name change or change in mailing address by the 30th day after the date the change was made 	88.72
<ul style="list-style-type: none"> Failure to present the pocket license upon request when conducting a remote polygraph examination 	88.73
<ul style="list-style-type: none"> Failure to mark in the required manner on each polygraph chart during a polygraph examination all questions asked a subject and all of the subject's answers 	88.74(1)(A), 88.74(1)(E)
<ul style="list-style-type: none"> Failure to have a written question sheet while conducting an examination which contained the exact wording of every question asked 	88.74(1)(B)
<ul style="list-style-type: none"> Used abbreviations while conducting an examination which were not defined on the question sheet 	88.74(1)(C)
<ul style="list-style-type: none"> Failure to allow a minimum of twenty seconds between each question while conducting an examination 	88.74(3)

Class B:

1st Violation	2nd Violation	3rd Violation
\$500	\$600 to \$1,500 and/or up to a 1 year full suspension	\$1,600 to \$2,500 and/or a 2 year full suspension up to revocation

<ul style="list-style-type: none"> Conducted a polygraph examination with an expired license 	1703.201(a) 88.21
<ul style="list-style-type: none"> Disclosed information acquired from a polygraph examination to another person other than one allowed 	1703.306(a), 88.77(a)
<ul style="list-style-type: none"> Disclosed information acquired in private consultation to another person other than one allowed 	1703.306(c), 88.77(c)

• Sponsored more than two trainees at one time	88.70(b)
• Failure to directly observe a sponsored trainee's polygraph examinations as required	88.70(c)(1)
• Failure to be available to assist a sponsored trainee conducting a polygraph examination outside the direct observation of the sponsor	88.70(c)(2)
• Failure to carefully review each polygraph examination administered by the trainee for accurate chart interpretation before a final opinion was given	88.70(d)
• Failure to review at the conclusion of each week the report submitted by a trainee describing all polygraph related work conducted during the week	88.70(e)
• Failure to prepare and keep a monthly report of all polygraph related work conducted by a trainee and all curriculum used in the course of supervised instruction	88.70(f)
• Failure to include all required information in the monthly report of all polygraph related work conducted by a trainee and all curriculum used in the course of supervised instruction	88.70(f)
• Failure to use the approved curriculum in the course of supervised instruction of a trainee	88.70(g)
• Failure to notify a trainee in writing of a termination in sponsorship within ten days	88.70(i)(1)
• Failure to notify the Department in the required manner of a termination in sponsorship within ten days	88.70(i)(2), 88.71(d)(2)
• Failure to submit a copy of all monthly reports to the Department or the trainee within ten days of a termination in sponsorship	88.70(i)(3)
• Failure to retain all polygraph examiner internship records for at least two years	88.70(j)
• Failure of trainee to observe a sponsor conduct a minimum of two polygraph examinations prior to beginning field work in the internship program	88.71(a)
• Failure of trainee to provide the sponsor at the conclusion of each week a report describing all polygraph related work conducted during the week	88.71(b)
• Failure of trainee to give a preliminary opinion of the results of a polygraph examination that was administered outside the direct observation of the sponsor, when requested by an examinee	88.71(c)
• Failure to advise an examinee that a requested opinion was preliminary until the examination was reviewed and an opinion was given by the sponsor	88.71(c)
• Failure of a trainee to notify a former sponsor in writing of a termination in sponsorship within ten days of the termination	88.71(d)(1)
• Failure of trainee to notify a former sponsor in writing of a change in sponsorship within ten days of the change	88.71(e)(1)
• Failure of trainee to notify the Department in the required manner of a change in sponsorship within ten days	88.71(e)(2)
• Failure of trainee to pay the change of sponsor fee within ten days	88.71(e)(3)
• Gave a verbal or written opinion based on chart analysis when the same relevant questions were not asked a minimum of two separate times	88.74(2)
• Included questions in the testing phase that were intended to inquire into or develop information about an examinee's religious, racial or political beliefs when not relevant to a specific investigation	88.75(b)
• Failure to give the examinee an opportunity to explain the results of the examination	88.76(b)

Class C:

1st Violation	2nd Violation	3rd Violation
\$1,000 to \$2,000 and/or up to a 1 year full suspension	\$2,100 to \$4,000 and/or up to revocation	\$4,100 to \$5,000 plus a 2 year full suspension up to revocation

• Conducted a polygraph examination without holding a license	1703.201(a)
• Represented oneself as a polygraph examiner without holding a license	1703.201(b)
• Engaged in a polygraph examiner internship without holding a license	1703.208(a)
• Used an instrument that does not comply with the instrumentation requirements	1703.305(b)
• Failure to inform the examinee of the nature of the examination and that the subject's participation in the examination was voluntary	1703.351(a)(7)
• Failure to inform the examinee of the results on request or prior to the termination of the examination	1703.351(a)(8), 88.76(a)
• Failure to provide within a reasonable time information requested by the Department as the result of a formal complaint	1703.351(a)(11)
• Failure to immediately surrender a suspended or revoked license to the Department	1703.353
• Failure to have an insurance policy or surety bond guaranteeing payment of up to \$5,000 against the examiner for any wrongdoing	88.40(a)
• Failure to maintain an insurance policy, surety bond or continuation bond at all times during a license period	88.40(b)
• Failure to keep insurance policy or bond in effect for two years after the effective cancellation date	88.40(d)
• Failure to make all polygraph examiner internship records available to the Department upon request	88.70(j)
• Failure to retain for inspection all required records and other relevant documents for at least two years from the date of the examination	88.79(a)
• Failure to make available to the Department, upon request, all required records and other relevant documents	88.79(b)

Class D:

1st Violation	2nd Violation	3rd Violation
\$2,000 to \$4,000 plus up to a 1 year full suspension	\$3,000 to \$5,000 plus a 1 year full suspension up to revocation	\$5,000 plus revocation

• Aided or abetted another to violate a law or rule regulating polygraph examiners	1703.351(a)(3)
• Allowed license to be used by an unlicensed person	1703.351(a)(4)
• Made a willful misrepresentation or false promise or caused the printing of a false or misleading advertisement to obtain business or trainees	1703.351(a)(6)
• Administered a polygraph examination to a child taken into custody by a law enforcement or probation officer but not transferred to criminal court for prosecution and failed to get the consent of the child's attorney or the juvenile court	1703.351(a)(9)
• Made a false report concerning an examination for polygraph examination purposes	1703.351(a)(10)
• Demonstrated unworthiness or incompetency to act as a polygraph examiner	1703.351(a)(12)

<ul style="list-style-type: none"> Conducted an examination when the licensee had reason to believe the examination was intended to circumvent or defy the law 	88.75(a)
<ul style="list-style-type: none"> Interrogated or conducted an examination on a subject's sexual behavior when not a specific issue, relevant or necessary to develop comparison questions 	88.75(c)
<ul style="list-style-type: none"> Conducted a polygraph examination when the licensee believed the subject was physically or psychologically unfit for an examination 	88.75(d)

Class E:

1st Violation	2nd Violation	3rd Violation
\$3,000 up to 5,000 and/or revocation	\$3,000 up to 5,000 and/or revocation	\$3,000 up to 5,000 and/or revocation

<ul style="list-style-type: none"> Failure to comply with previous order of Commission/Executive Director 	51.353(a), 88.90
<ul style="list-style-type: none"> Obtained a license by fraud or false representation 	1703.351(a)(5), 60.23(a)(1)
<ul style="list-style-type: none"> Failure to pay the Department for a dishonored check 	60.82

POLYGRAPH ADVISORY COMMITTEE MEETING
JANUARY 31ST, 2018

RECENT ACCOMPLISHMENTS AND CURRENT PROJECTS

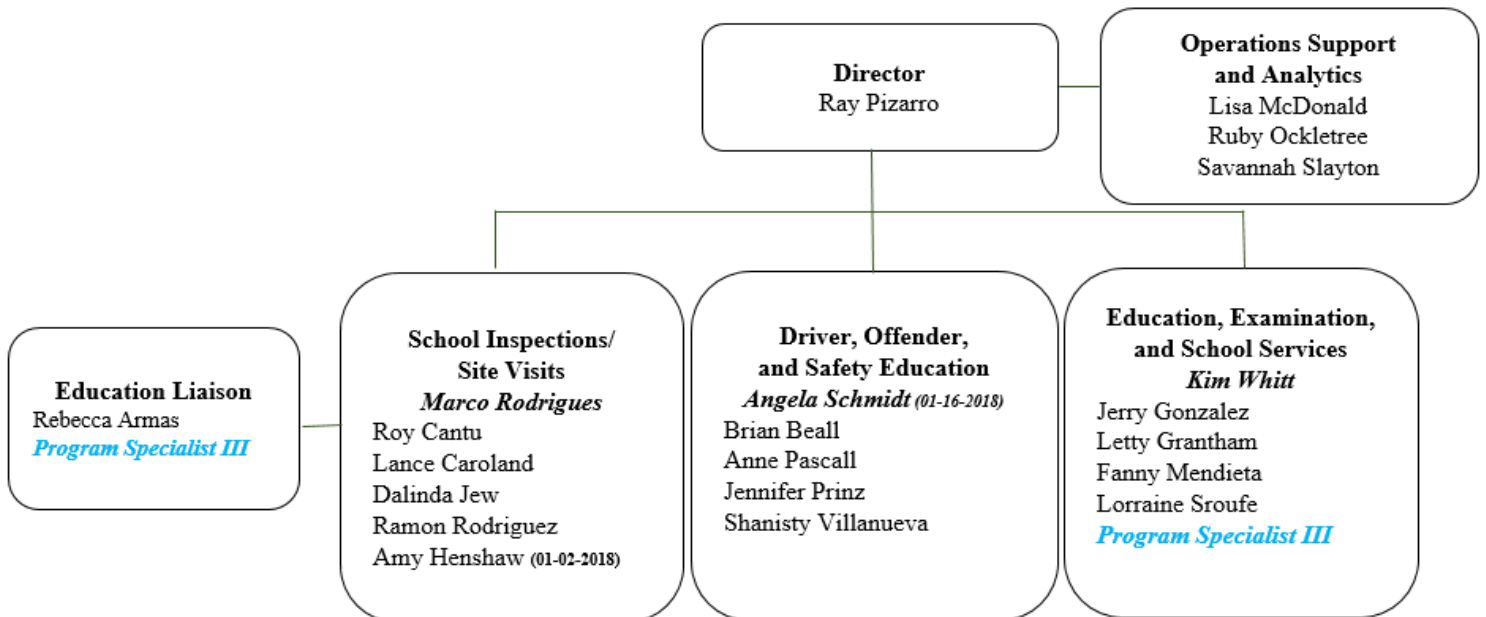
EDUCATION, EXAMINATION, & SCHOOL SERVICES

TOTAL E-MAIL ANSWERED BY STAFF

(AS OF NOVEMBER 30th, 2017)

MONTH	FY 2018	FY 2017	FY 2016	FY 2015
September	1,545	1,158	1,389	
October	1,205	1,263	1,060	
November	1,357	744	996	
December		653	760	
January		955	1,060	
February		974	1,047	
March		1,463	994	
April		981	966	
May		1,140	1,061	
June		1,747	911	
July		804	767	835
August		1,266	1,123	1,104
TOTAL	4,107	13,148	12,134	1,939

NEW DIVISION CHART



KEY STATISTICS AND TRENDS

POLYGRAPH EXAMINATION STATISTICS

(AS OF NOVEMBER 30th, 2017)

2018	SEP	OCT	NOV	Q1	DEC	JAN	FEB	Q2	MAR	APR	MAY	Q3	JUN	JUL	AUG	Q4	TOT
Pass	1	7	7	15				0				0				0	15
Fail	3	3	9	15				0				0				0	15
Total	4	10	16	30				0				0				0	30
Rate	25.0%	70.0%	43.8%	50.0%				0.0%				0.0%				0.0%	50.0%
2017	SEP	OCT	NOV	Q1	DEC	JAN	FEB	Q2	MAR	APR	MAY	Q3	JUN	JUL	AUG	Q4	TOT
Pass	11	0	0	11	0	0	0	0	1	1	1	3	0	1	4	5	19
Fail	2	0	0	2	2	2	2	6	3	3	1	7	2	3	7	12	27
Total	13	0	0	13	2	2	2	6	4	4	2	10	2	4	11	17	46
Rate	84.6%	0.0%	0.0%	84.6%	0.0%	0.0%	0.0%	0.0%	25.0%	25.0%	50.0%	30.0%	0.0%	25.0%	36.4%	29.4%	41.3%
2016	SEP	OCT	NOV	Q1	DEC	JAN	FEB	Q2	MAR	APR	MAY	Q3	JUN	JUL	AUG	Q4	TOT
Pass	0	0	2	2	1	4	5	10	6	6	5	17	0	0	0	0	29
Fail	0	2	6	8	5	2	2	9	1	5	4	10	0	0	0	0	27
Total	0	2	8	10	6	6	7	19	7	11	9	27	0	0	0	0	56
Rate	0.0%	0.0%	25.0%	20.0%	16.7%	66.7%	71.4%	52.6%	85.7%	54.5%	55.6%	63.0%	0.0%	0.0%	0.0%	0.0%	51.8%

EXAMINATION TYPE STATISTICS

(AS OF NOVEMBER 30th, 2017)

EXAMINATION TYPE	PASS	FAIL	TOTAL	RATE	EXAMINATION TYPE	PASS	FAIL	TOTAL	RATE
1ST QUARTER – SEPTEMBER – OCTOBER -- NOVEMBER					2ND QUARTER DECEMBER – JANUARY – FEBRUARY				
WRITTEN	10	4	14	71.43%	WRITTEN				
SCENARIO	3	11	14	21.43%	SCENARIO				
PRACTICAL	2	0	2	100.00%	PRACTICAL				
TOTAL	15	15	30	50.00%	TOTAL				0.0%
EXAMINATION TYPE	PASS	FAIL	TOTAL	RATE	EXAMINATION TYPE	PASS	FAIL	TOTAL	RATE
3RD QUARTER MARCH – APRIL – MAY					4TH QUARTER JUNE – JULY -- AUGUST				
WRITTEN					WRITTEN				
SCENARIO					SCENARIO				
PRACTICAL					PRACTICAL				
TOTAL				0.0%	TOTAL				0.0%

POLYGRAPH CONTINUING EDUCATION STATISTICS

(AS OF NOVEMBER 30th, 2017)

FY 2015	SEP	OCT	NOV	Q1	DEC	JAN	FEB	Q2	MAR	APR	MAY	Q3	JUN	JUL	AUG	Q4	TOT
Course Approvals Issued	2	1	1	4				0				0				0	4
Total Course Population	8	7	8	8				0				0				0	8
Total Provider Population	425	424	425	425				0				0				0	425
** NOTE: Currently, there are 7 Polygraph Continuing Education Providers. **																	
FY 2017	SEP	OCT	NOV	Q1	DEC	JAN	FEB	Q2	MAR	APR	MAY	Q3	JUN	JUL	AUG	Q4	TOT
Course Approvals Issued	0	2	1	3	0	0	1	1	0	2	0	2	0	0	0	0	6
Total Course Population	6	6	6	6	6	6	7	7	7	8	7	7	7	6	6	6	6
Total Provider Population	380	409	409	409	407	415	418	418	421	424	427	427	428	430	430	430	430
FY 2016	SEP	OCT	NOV	Q1	DEC	JAN	FEB	Q2	MAR	APR	MAY	Q3	JUN	JUL	AUG	Q4	TOT
Course Approvals Issued	0	1	1	2	0	0	0	0	1	0	1	2	0	1	0	1	5
Total Course Population	10	8	8	8	8	8	8	8	7	6	6	6	6	6	6	6	6
Total Provider Population	393	394	391	391	391	393	394	394	388	387	384	384	382	378	378	378	378

Compliance Division Staff Report

Polygraph Advisory Board Meeting

January 31, 2018

Public Outreach

- Russel Taulli will attend the Texas Association of Law Enforcement Polygraph Investigators, TALEPI, Training Conference, June 18 - 22, 2018, in San Antonio.
- Russel, as the Compliance Division's program specialist for the Polygraph program, frequently answers phone calls and emails regarding the program. Inquiries are usually regarding the polygraph rules or the statute, educational requirements, reciprocity issues, or complaints about examiners.
- The Compliance Division is open to opportunities for public outreach (conventions, conferences, association meetings, etc.) related to the Polygraph Program. Compliance specialists are available to speak and provide information at these events. We invite the advisory board and industry members to please let us know when an opportunity arises. Please send an email to Russ.Taulli@TDLR.Texas.Gov.